



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 6606-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 22 September 2023. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You enlisted in the U.S. Marine Corps and began a period of active duty service on 21 July 1978. Your pre-enlistment physical examination, on 19 July 1978, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On or about 9 August 1978, you received non-judicial punishment (NJP) for insubordinate conduct. You did not appeal your NJP.

On 23 December 1978, you commenced a period of unauthorized absence (UA) that terminated after twelve (12) days on 4 January 1979. Your command decided to not charge you with UA, but instead characterized your unexcused absence as annual leave.

On or about 13 August 1979, you received NJP for two separate UA specifications. You did not

appeal your NJP. On or about 14 September 1979, you received NJP for a 14-day UA and for missing the movement of your ██████████. You did not appeal your NJP.

On or about 2 July 1980, you commenced a period of unauthorized absence (UA) that terminated after fifteen (15) days on 17 July 1980. On or about 4 August 1980, you commenced another UA that terminated after forty-nine (49) days on or about 22 September 1980.

On 8 January 1981, you submitted a voluntary written request for an administrative discharge under Other Than Honorable conditions (OTH) for the good of the service to escape court-martial for your last two UA offenses. Prior to submitting this voluntary discharge request you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You indicated you were entirely satisfied with your counsel's advice, and you acknowledged that if your request was approved, your characterization of service will be OTH without referral or consideration by an administrative separation board. You acknowledged that an undesirable/OTH discharge may deprive you of virtually all veterans' benefits based upon your current period of active service, and that you may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the armed forces or the character of discharge received therefrom may have a bearing. In the interim, your separation physical examination, on 10 February 1981 noted no psychiatric or neurologic issues or symptoms. Ultimately, on 11 February 1981, you were separated from the Marine Corps with an OTH discharge characterization and assigned an RE-4 reentry code.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) your DD Form 214 states you were court-martialed which is incorrect, and (b) you were never court-martialed. For purposes of clemency and equity consideration, the Board you did not provide documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board determined the notations on your DD Form 214 were correct in their entirety. The narrative reason for separation: "to escape trial by courts-martial," describes the written request you submitted in January 1981. You expressly requested in writing to receive an OTH administrative discharge to *escape* or avoid a trial by court-martial for both of your long-term UA offenses. Your narrative reason for separation correctly and accurately describes the final disposition in your case, and in no way implies that you were ever court-martialed.

The Board did not believe that your record of service was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The simple fact remains is that you left the Marine Corps while you were still contractually obligated to serve and you went into a

UA status without any legal justification or excuse on no less than two (2) separate occasions totaling approximately sixty-four (64) days. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.28 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your OTH discharge characterization.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. Even in light of the Wilkie Memo and reviewing the record and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

9/26/2023

